

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 WILSON EARL LOVE)
8 Plaintiff,) Case No. 2:17-cv-01317-RFB-CWH
9 v.)
10 STATE OF NEVADA,)
11 Defendant.)
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13 Presently before the court is pro se Plaintiff Wilson Earl Love's application to proceed *in
14 forma pauperis* (ECF No. 1), filed on September 30, 2016. Also before the Court is Plaintiff's
15 motion for service of summons (ECF No. 3), also filed on September 30, 2016.

16 Under 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in
17 district court. Additionally, based on the Judicial Conference Schedule of Fees, District Court
18 Miscellaneous Fee Schedule, effective June 1, 2016, a \$50.00 administrative fee applies for filing a
19 civil action in district court, making the total filing fee \$400.00. Under 28 U.S.C. § 1915(a)(1), the
20 court may authorize the commencement of a civil case “without prepayment of fees and costs or
21 security therefor” if a person submits an affidavit including a statement of all assets that
22 demonstrates the person is unable to pay the fees or give security for them.

23 Here, Plaintiff submitted the affidavit required by § 1915(a) to show that he is unable to
24 prepay fees and costs or give security for them. Specifically, Plaintiff indicates that his gross income
25 from social security and retirement is approximately \$790 per month, with monthly expenses of \$91
26 per month for storage, and debts of \$60. Based on Plaintiff's affidavit, it does not appear that he
27 pays any regular monthly expenses for housing, transportation, utilities, loan payments, or other
28 usual living expenses. Plaintiff's affidavit also indicates that his debts or financial obligations are
minimal.

1 Based on Plaintiff's affidavit, his monthly income exceeds his monthly expenses by
2 approximately \$700. Plaintiff therefore has not demonstrated that he is unable to pay the costs of
3 commencing this case under 28 U.S.C. § 1915(a)(1). *See Ross v. San Diego County*, 2008 WL
4 440413 (S.D. Cal. Feb. 14, 2008) (finding plaintiff did not qualify to proceed *in forma pauperis*
5 where she received \$2,100 in disability payments, owned a car and house, and “carried significant
6 debt”); *see also Samuel v. Nat'l Health Svs., Inc.*, 2006 WL 2884795 at *1 (E.D. Cal. Oct. 10, 2006)
7 (denying IFP application where plaintiff received \$752.40 per month in Supplemental Security
8 Income and had received a \$10,000.00 judgment and owned a van valued at \$500.00) (*citing Green*
9 *v. Cotton Concentration Co.*, 294 F.Supp. 34, 35 (D.C. Tex. 1968) (affidavit of indigency
10 insufficient to establish indigency where both employed plaintiffs earned less than \$350)); *Matter of*
11 *Anderson*, 130 B.R. 497, 500 (W.D. Mich. 1991) (earnings of \$950 per month insufficient to show
12 indigency where poverty level in Michigan was \$6,620 per year); *In re Fontaine*, 10 B.R. 175, 177
13 (D. R.I. 1981) (no indigency where weekly net pay of \$132, no dependents, and lived with mother to
14 whom she paid \$25 per week). The court therefore will deny Plaintiff's application to proceed *in*
15 *forma pauperis* without prejudice. Having concluded that Plaintiff may not proceed *in forma*
16 *pauperis*, the court will not screen the complaint under 28 U.S.C. § 1915(e)(2)(B).

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1 IT IS THEREFORE ORDERED that Plaintiff Wilson Earl Love's application to proceed *in*
2 *forma pauperis* (ECF No. 1) is DENIED without prejudice. If Plaintiff so chooses, he may file a
3 renewed application to proceed *in forma pauperis* addressing the deficiencies noted above.

4 IT IS FURTHER ORDERED that Plaintiff must either file a renewed application to proceed
5 *in forma pauperis* or pay the \$350.00 filing fee, plus the \$50.00 administrative fee, within 30 days
6 from the date of this order.

7 IT IS FURTHER ORDERED that in light of the Court's decision to deny Plaintiff's motion
8 to proceed *in forma pauperis*, Plaintiff's motion for service of summons (ECF No. 3) is DENIED as
9 moot.

10 IT IS FURTHER ORDERED that Plaintiff's failure to timely comply with this order will
11 result in a recommendation that this case be dismissed.

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13 DATED: May 15, 2017

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16 C.W. Hoffman, Jr.
United States Magistrate Judge

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